



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



Governor's Office of Planning & Research

**July 28 2021**

## **STATE CLEARINGHOUSE**

July 27, 2021

Sara Paiva-Lowry  
California Department of Water Resources  
1416 Ninth Street, Room 604  
Sacramento, California 95814

**Subject: B.F. Sisk Dam Safety of Dams Modification Project (Project)  
Draft Supplemental Environmental Impact Report  
SCH No.: 2009091004**

Dear Ms. Paiva-Lowry:

The California Department of Fish and Wildlife (CDFW) received a Draft Supplemental Environmental Impact Report (SEIR) from the California Department of Water Resources (DWR) for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under Fish and Game Code.

### **CDFW ROLE**

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological

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<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

Sara Paiva-Lowry  
California Department of Water Resources  
July 27, 2021  
Page 2

expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code may be required.

**Water Rights:** The use of unallocated stream flows is subject to appropriation and approval by the State Water Resources Control Board (SWRCB) pursuant to Water Code section 1225. CDFW, as Trustee Agency, is consulted by the SWRCB during the water rights process to provide terms and conditions designed to protect fish and wildlife prior to appropriation of the State's water resources. Certain fish and wildlife are reliant upon aquatic ecosystems, which in turn are reliant upon adequate flows of water. CDFW therefore has a material interest in assuring that adequate water flows within streams for the protection, maintenance and proper stewardship of those resources. CDFW provides, as available, biological expertise to review and comment on environmental documents and impacts arising from project activities.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** DWR

**Objective:** DWR certified an Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) in 2019 which assessed the approved Project that involves making improvements to the downstream side of the existing dam to enhance its stability and increasing the dam crest height to reduce the potential that water would overtop the dam if seismic-induced slumping were to occur. Since that time, DWR has identified modifications to the approved Project and a Draft SEIR has been prepared to address the environmental effects of the following new modifications:

- New impact areas associated with development of a new permanent public campground on the northwestern shore of O'Neill Forebay;
- Modification to public campground and day use area closure in the vicinity of San Luis Reservoir and O'Neill Forebay;
- The consideration of two alternative on-site borrow areas as sources of earth fill material for the dam rehabilitation, beyond the borrow areas identified in the 2019 EIS/EIR;

Sara Paiva-Lowry  
California Department of Water Resources  
July 27, 2021  
Page 3

- Minor expansion of the contractor work areas that were not part of the original study area; and
- Modifications to construction assumptions.

**Location:** The Project is located in western Merced County, on the west side of California's Central Valley, approximately 9 miles west of the City of Los Banos on State Route 152.

**Timeframe:** Construction of Project activities is scheduled to start in September 2025 and will be completed in 8 years. Preconstruction and design activities will begin in 2022.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist DWR in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the CEQA document prepared for this Project.

There are many special-status resources present in and adjacent to the Project area. These resources may need to be evaluated and addressed prior to any approvals that would allow ground-disturbing activities or land use changes. In our previous comment letters dated June 12, 2020 and September 28, 2020, CDFW expressed concerns regarding potential impacts to special-status species including, but not limited to, the State and federally threatened California tiger salamander (*Ambystoma californiense*), the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), the State endangered foothill yellow-legged frog (*Rana boylei*), the State endangered and fully protected bald eagle (*Haliaeetus leucocephalus*), the fully protected golden eagle (*Aquila chrysaetos*), the State threatened Swainson's hawk (*Buteo swainsonii*), the federally threatened and State species of special concern California red-legged frog (*Rana draytonii*), the State candidate-listed as threatened mountain lion (*Puma concolor*), and tule elk (*Cervus canadensis nannodes*). CDFW appreciates that some of these species were addressed in the Draft SEIR, including incorporating some of CDFW's recommended measures. While the Project proponent may decide that some species are unlikely to occur within the Project site, CDFW cannot rule out that there is no potential for the species to be found. Specifically, CDFW continues to have concerns regarding foothill yellow-legged frog. Therefore, CDFW recommends the following be addressed in the final SEIR for this Project.

### Foothill Yellow-Legged Frog (FYLF)

FYLF are primarily stream dwelling and requires shallow, flowing water in streams and rivers with at least some cobble-sized substrate, however, they can use terrestrial

Sara Paiva-Lowry  
California Department of Water Resources  
July 27, 2021  
Page 4

upland habitats during the overwintering period (Thomson et al. 2016). FYLF populations throughout the State have experienced ongoing and drastic declines and many have been extirpated; historically, FYLF occurred in mountain streams from the San Gabriel River in Los Angeles County to southern Oregon west of the Sierra-Cascade crest (Thomson et al. 2016). Habitat loss from growth of cities and suburbs, invasion of nonnative plants, impoundments, water diversions, stream maintenance for flood control, degraded water quality, and introduced predators, such as bullfrogs are the primary threats to FYLF (Thomson et al. 2016, USFWS 2017).

The California Natural Diversity Database (CNDDDB) documents FYLF occurrences near the Project site (CDFW 2021). Therefore, CDFW cannot conclude that FYLF are absent from the Project area. Without appropriate avoidance and minimization measures for FYLF, potentially significant impacts associated with the Project's activities include inadvertent entrapment, destruction of eggs and oviposition (i.e., egg-laying) sites, degradation of water quality, reduced reproductive success, reduction in health and vigor of eggs, larvae and/or young, and direct mortality of individuals.

CDFW recommends that a qualified wildlife biologist familiar with FYLF conduct surveys in accordance with the USFWS "Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog" (USFWS 2005) to determine if FYLF are within or adjacent to the Project area. While this survey protocol is designed for CRLF, the survey may be used for FYLF with focus on stream/river habitat. If any life stage of FYLF (adult, metamorph, larvae, egg mass) is found during surveys or at any time during construction, consultation with CDFW is warranted to determine if the Project can avoid take. CDFW recommends that initial ground-disturbing activities be timed to avoid the period when FYLF are most likely to be moving through upland areas (November 1 through March 31). When ground-disturbing activities must take place between November 1 and March 31, CDFW recommends a qualified biologist monitor construction activity daily for FYLF. If take cannot be avoided, acquisition of take authorization would be warranted prior to initiating ground-disturbing activities; take authorization would occur through issuance of an Incidental Take Permit by CDFW, pursuant to Fish and Game Code section 2081 subdivision (b).

## **ENVIRONMENTAL DATA**

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the CNDDDB. The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address:

Sara Paiva-Lowry  
California Department of Water Resources  
July 27, 2021  
Page 5

CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## FILING FEES

If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CDFW appreciates the opportunity to comment on the Project to assist DWR in identifying and mitigating the Project's impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). If you have any questions, please contact Jim Vang, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 243-4014, extension 254, or by electronic mail at [Jim.Vang@wildlife.ca.gov](mailto:Jim.Vang@wildlife.ca.gov).

Sincerely,

DocuSigned by:



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Gerald Hatler for Julie A. Vance  
Regional Manager

cc: Office of Planning and Research, State Clearinghouse, Sacramento

Sara Paiva-Lowry  
California Department of Water Resources  
July 27, 2021  
Page 6

## **LITERATURE CITED**

CDFW. 2021. Biogeographic Information and Observation System (BIOS).  
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Thomson, R. C., A. N. Wright, and H. Bradley Shaffer. 2016. California Amphibian and Reptile Species of Special Concern. California Department of Fish and Wildlife and University of California Press.

USFWS. 2005. Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog. March 2005. 26 pp.

USFWS. 2017. Species Account for California Red-legged frog. March 2017. 1 pp.